

A **Nik Ibrahim bin Abdul Rahman & Anor v
Pentadbir Tanah Jajahan Gua Musang & Ors**

HIGH COURT (KOTA BAHRU) — CIVIL SUIT NO MT(1) 22-94 OF 1999
MUHAMMAD KAMIL J
12 SEPTEMBER 2000

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Land Law — *Adverse possession — Occupants under temporary title — Subsequent registered proprietor issued notice to vacate, whether valid — Whether occupants were squatters — Whether occupants should be allowed to remain on land to harvest crops*

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The plaintiffs were brought into the land by Kesedar ('the third defendant') to clear up the land and to plant oil palm. They were given two lots. Besides oil palm, the plaintiffs planted other cash crops for their own consumption. The plaintiffs later applied to Pentadbir Tanah Jajahan Gua Musang ('the first defendant') and were allegedly given temporary titles (Surat Hakmilik Sementara ('SHS')) on payment of a premium for the lots that they occupy. Subsequently, the

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land was alienated to the third defendant and it became the registered proprietor. The third defendant apparently granted the land to Kesedar Perkilangan Sdn Bhd ('the fifth defendant'), who then issued notices to the plaintiffs to vacate the land. The plaintiffs applied to be allowed to remain and collect rubber on the land and that the fifth defendant be restrained from entering into the land.

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Held, dismissing the application with costs:

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(1) Assuming that the plaintiffs had the authority under the SHS, which was temporary in nature, it could not go against the registered proprietor of the land who was issued with the document of title by the state authority (see p 62I).

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(2) The plaintiffs were brought into the land lawfully and were given SHS over their lots, but when the registered proprietor of the land required its land for its own purpose, no one could legally stop it. Thus, it was lawful for the notices to be issued by the owner of the land or its agent to the plaintiffs, unless there was evidence to the contrary. Failure to quit the land as requested, the plaintiffs remained on the land at their own peril. They were trespassers. Trespassers have no right in law or in equity as against the registered proprietor (see p 63E-F).

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(3) The plaintiffs cannot exercise any right whatsoever over the crops which they had planted on the land. Everything planted in the soil belongs to the soil. *Quicquid plantatur solo credit solo*. All that are planted in the land belong to the registered proprietor unless there was evidence to the contrary, for example, the proprietor of the land allows the plaintiffs to remain, to reap what they have sown or planted. There was no such evidence that they had been allowed to remain on the land to harvest the cash crops (see p 63G-I).

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[Bahasa Malaysia summary]

Plaintif-plaintif telah dibawa masuk ke tanah tersebut oleh Kesedar ('defendan ketiga') untuk mengusahakan kawasan tersebut dan menanam kelapa sawit. Mereka diberi dua lot. Selain kelapa sawit, plaintif-plaintif menanam tanaman hasil lain bagi kegunaan mereka sendiri. Plaintif-plaintif kemudiannya membuat permohonan kepada Pentadbir Tanah Jajahan Gua Musang ('defendan pertama') dan dikatakan diberi Surat Hakmilik Sementara ('SHS') setelah membayar premium ke atas lot-lot yang didiami oleh mereka. Kemudiannya, tanah tersebut diberimilik kepada defendan ketiga dan ia menjadi pemilik berdaftar. Defendan ketiga dipercayai memberi tanah tersebut kepada Kesedar Perkilangan Sdn Bhd ('defendan kelima'), yang kemudiannya mengeluarkan notis-notis kepada plaintif-plaintif bagi mengosongkan tanah tersebut. Plaintif-plaintif membuat permohonan agar dibenarkan menetap dan mengumpul getah di tanah tersebut dan untuk menghalang defendan kelima daripada memasuki tanah tersebut.

Diputuskan, menolak permohonan tersebut dengan kos:

- (1) Jikaupun plaintif-plaintif mempunyai kuasa di bawah SHS tersebut yang bersifat sementara, ia tidak boleh menentang pemilik berdaftar tanah tersebut yang diberi surat hakmilik oleh pihak berkuasa negeri (lihat ms*****).
- (2) Plaintif-plaintif telah dibawa masuk ke tanah tersebut secara sah dan telah diberi SHS untuk lot-lot mereka, tetapi apabila pemilik berdaftar tanah tersebut memerlukan tanah tersebut bagi tujuan mereka sendiri, tidak ada sesiapa yang berhak menghalang mereka. Oleh itu, memang sah di sisi undang-undang bagi pemilik tanah atau ajennya mengambil tindakan mengeluarkan notis kepada plaintif-plaintif, kecuali jika terdapatnya keterangan menunjukkan perkara yang sebaliknya. Kerana gagal mengosongi tanah tersebut seperti yang diminta, plaintif-plaintif menetap di tanah tersebut dan menanggung risiko itu sendiri. Mereka ialah penceroboh. Penceroboh tidak mempunyai hak di sisi undang-undang atau ekuiti terhadap pemilik berdaftar (lihat ms *****).
- (3) Plaintif-plaintif tidak mempunyai apa-apa jua hak ke atas tanaman yang ditanam di atas tanah tersebut. Semua yang ditanam di tanah adalah kepunyaan tanah tersebut. *Quicquid plantatur solo credit solo*. Semua tanaman di tanah tersebut menjadi kepunyaan pemilik berdaftar kecuali jika terdapatnya keterangan yang membuktikan sebaliknya, misalnya, pemilik tanah tersebut mengizinkan plaintif-plaintif menetap di tanah tersebut, untuk mengaup hasil cucuk-tanam mereka. Tiada keterangan menunjukkan bahawa mereka diberi kebenaran menetap di tanah tersebut untuk menuai tanaman hasil mereka (lihat ms*****).

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A Notes

For cases on adverse possession generally, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1505–1557.

B Cases referred to

Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors [1984] 2 MLJ 123 (refd)

Sidek bin Haji Muhamad & Ors v The Government of the State of Perak [1982] 1 MLJ 313 (refd)

Tan Chiew Too v Tee Kim Kuay [1997] 1 MLJ 221 (refd)

C *Teh Bee v K Maruthamuthu* [1977] 2 MLJ 7 (refd)

Yee Seng Plantations Sdn Bhd v Kerajaan Negeri Terengganu [2000] 3 MLJ 699 (refd)

Legislation referred to

D Lembaga Kemajuan Kelantan Selatan Act 1978

National Land Code 1965 ss 5, 12, 16(2), (3), 340

Rules of the High Court 1980 O 32 r 1, O 92 r 4

Zainal Abidin bin Mustaffa (Zainal & Mariani) for the plaintiffs.

Apandi bin Ali (Apandi Ali & Co) for the third and fifth defendants.

E *Jalaldin bin Hassan* (State Legal Advisor, Kelantan) for the first and fourth defendants.

Muhammad Kamil J. : This is the plaintiff's application dated 20 June 2000 (encl 15), under O 32 r 1 and O 92 r 4 of the Rules of the High Court 1980, for the following orders:

- F** (a) that the plaintiffs be allowed to remain and collect rubber on Lot No PT 2153 and Lot No PT 2221, on a piece of land known as Lot 9, PTGM 450/98, Mukim Relai, Daerah Ciku, Kelantan ('the said land'), and
- G** (b) that Kesedar Perkilangan Sdn Bhd ('the fifth defendant') be restrained from entering into the said land.

Brief facts

H In 1980, about 200 people including the plaintiffs were brought into the said land by Kesedar ('the third defendant') to clear up the said land and plant oil palm. They were paid wages by the third defendant for the work. The plaintiffs were given Lot No PT 2153 and Lot No PT 2221 which were formerly known as Lot 197 and Lot 340. Besides oil palm, the plaintiffs planted rubber, bananas and other cash crops for their own consumption while on the lots.

I In 1995, the plaintiffs had applied to Pentadbir Tanah Jajahan Gua Musang ('the first defendant'), and allegedly were given a surat hakmilik sementara ('SHS') on payment of a premium for the lots they occupied.

Subsequently on 21 June 1998, the said land was alienated to the third defendant, and it became the registered proprietor of the said land. It seems that the third defendant granted this land to Kesedar Perkilangan Sdn Bhd (the fifth defendant), a subsidiary company established pursuant to Lembaga Kemajuan Kelantan Selatan Act 1978 (Act 203). The fifth defendant then issued notices to the plaintiffs to vacate the said land, ie Lot No PT 2153 and Lot No PT 2221 which the plaintiffs occupy.

The plaintiffs now sued all five defendants and the suit was pending trial. In the meantime, the plaintiffs filed this application.

The plaintiffs alleged that the first defendant had issued them with SHS for their lots and had allowed them to grow cash crops such as bananas, etc for their own consumption. They had paid the premium for their lots. As such, they were entitled to stay on their lots and continue to reap the harvest of the crops in their lots, at the very least, until the court's further order.

The third defendant submitted that the said land had been alienated to them in 1998, and pursuant to the 1978 Act, the fifth defendant was established thereunder to develop the said land. As such the fifth defendant had issued notices to quit the said land to all the settlers including the plaintiffs.

It is clear that the said land was vested in the third defendant, which by its obligation under the 1978 Act, had granted the fifth defendant the right to work the oil palm plantation on the said land. It is apparent that under the 1978 Act, the government, in its effort to stimulate the growth of the agricultural sector of the economy of the country, ie the oil palm industry, has established Kesedar and its subsidiary. The intention of the Act is clear, that is, to promote the oil palm plantation in the interest of the general public, and such an interest overrides the interest of individuals. It appears that the fifth defendant was doing its statutory duty in issuing the settlers including the plaintiffs, notices to vacate the lots they occupied in the said land.

However, when the said land was alienated to the third defendant in 1998, the status of the state land had changed into that of an alienated land, and it became the property of the third defendant. The third defendant being the registered proprietor of the said land under the doctrine of indefeasibility of title under s 340 of the National Land Code, there is no statutory ground or other grounds of equity, to challenge the indefeasibility of the third defendant's document of title. See *Tan Chiew Too v Tee Kim Kuay* [1997] 1 MLJ 221 (FC).

Although the plaintiffs were issued with a suratan hakmilik sementara ('SHS'), this apparently allowed the plaintiffs to occupy their lots (in the said land) temporarily for a period, and that period was determined in 1998 with the issuance of the document of title of the said land to the third defendant. Evidently, it is clear that the SHS was only transitional, and there is no evidence that such an extension of time was granted.

Assuming that the plaintiffs had the authority under the SHS, which is temporary in nature, it cannot go against the registered proprietor of the said land who was issued the document of title by the state authority. In

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- A passing, I observe that Kerajaan Negeri Kelantan ('the second defendant') should not have been made a party, as it is quite distinct from the state authority, which according to the Kelantan State Constitution, is vested in the Ruler in Council: *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors* [1984] 2 MLJ 123 (FC); *Teh Bee v K Maruthamuthu* [1977] 2 MLJ 7.
- B The provisions of s 16(2) and (3) of the National Land Code 1965 read as follows:
- C (2) Any action, suit or other proceedings relating to land in which it is sought to establish any liability on the part of the state authority shall be brought against the state director in the name of his office.
- C (3) In any action, suit or other proceeding to which this section applies, the state director may appear personally, or may be represented by any advocate and solicitor, any federal counsel, the state's legal adviser or any land administrator or other officer appointed under sub s (1) of s 12.
- D It is manifestly clear from the plain language of the s 16(2) of the Code that the state authority is to be impleaded in a suit or other proceeding by citing the state director as a party. And, 'state director' according to s 5 of the Code 'means the director of lands and mines for the state appointed under s 12, and includes a deputy director of lands and mines appointed thereunder.'
- E See *Yee Seng Plantations Sdn Bhd v Kerajaan Negeri Terengganu* [2000] 3 MLJ 699 (CA).
- F The plaintiffs were brought into the said land lawfully, they were given SHS over their lots, but when the registered proprietor of the said land required its land for its own purpose, no one could legally stop it. Thus, it was fair and right to issue notices to quit to the plaintiffs. It is lawful for the notices to be issued by the owner of the said land or its agent, unless there is evidence to the contrary. Failing to quit the said land as requested, the plaintiffs remained on the land at their own peril. They are trespassers. Trespassers have no right in law or in equity against the registered proprietor, as in this case, even to collect the rubber and other cash crops which they had once upon a time, planted and enjoyed the benefit of over the years: see *Sidek bin Haji Muhamad & Ors v The Government of the State of Perak* [1982] 1 MLJ 313 (FC).
- G The plaintiffs cannot exercise any right whatsoever over the crops (ie bananas and rubber) which they planted on the land. Everything planted in the soil belong to the soil. *Quicquid plantatur solo cedit solo*. Whatever is natural to the soil, or planted there either for ornament or use, which is intended to be permanent, goes with the soil; the owner of the soil is the owner of everything planted in it. In the instant case, all that are planted in the said land belonged to the registered proprietor, unless there is evidence to the contrary, for example, the proprietor of the land allows the plaintiffs to remain, to reap what they have sown or planted. There is no such evidence that they had been allowed to remain on the said land to harvest the cash crops.
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In the circumstances, I found no merit in the application and I dismissed the application with costs to the defendants.

Application dismissed with costs.

Reported by Wong Ee Lynn

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